

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MICHAEL ALLEN BRYSON,
Petitioner,

Case No. 11-20571
Honorable Thomas L. Ludington

v.
UNITED STATES OF AMERICA,
Respondent.

_____ /

ORDER DIRECTING RESPONSE

On January 15, 2014, Michael Bryson filed a motion for an order to “Re-Open, Amend and Supplement” his motion to vacate his sentence. *See* Pet’r’s Mot., ECF No. 30. Although Bryson alleges that he brings the motion pursuant to both Federal Rule of Civil Procedure 15 and Rule 60, *id.* at 1, the Sixth Circuit has established that a district court “lacks power” to grant a Rule 15 motion “unless postjudgment relief is granted” first. *See In re Ferro Corp. Derivative Litigation*, 511 F.3d 611, 624 (6th Cir. 2008) (brackets omitted) (quoting *Acevedo-Villalobos v. Hernandez*, 22 F.3d 384, 389 (1st Cir. 1994)); *see also Morse v. McWhorter*, 290 F.3d 795, 799 (6th Cir. 2002) (“Following entry of final judgment a party may not seek to amend . . . without first moving to alter, set aside or vacate judgment pursuant to either Rule 59 or Rule 60”). Thus, Bryson’s motion will be considered only under Rule 60.

In any event, a response from the government is necessary to adjudicate the matter. One of Bryson’s arguments is that penalty enhancement information was filed *after* he had already pleaded guilty, in violation of 21 U.S.C. § 851(a)(1) (“No person who stands convicted of an offense under this part shall be sentenced to increased punishment . . . unless . . . before entry of a plea of guilty, the United States attorney files an information with the court . . . stating in writing the previous convictions to be relied upon.”). And, the docket seems to substantiate his

claim: Bryson pleaded guilty on January 17, 2012, but the notice of penalty enhancement was not filed until March 27, 2012.

The government must respond. Accordingly, it is **ORDERED** that the government is **DIRECTED** to file a response to Bryson's motion no later than **February 14, 2014**.

Dated: February 3, 2014

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means and upon Michael Allen Bryson #46147-039 Gilmer Federal Correctional Institution, Inmate Mail/Parcels, P.O. Box 6000 Glenville, WV 26351 by first class U.S. mail on February 3, 2014.

s/Tracy A. Jacobs
TRACY A. JACOBS